

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GIRLIE LINGAD,

14

Petitioner.

CASE NO. 07cv0857 BTM(AJB)

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

MICHAEL CHERTOFF, SECRETARY
OF THE DEPARTMENT OF
HOMELAND SECURITY, and ALBERTO
GONZALES, ATTORNEY GENERAL OF
THE UNITED STATES OF AMERICA

Respondents.

Petitioner has filed a Petition for Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2241. In her Petition, Petitioner contends that Magistrate Judge Porter's order certifying her extradition violated her due process rights under the U.S. Constitution. For the reasons discussed below, Petitioner's Petition is **DENIED**.

DISCUSSION

The parties are familiar with the factual and procedural background of this case, which need not be repeated here.

Petitioner’s sole basis for relief is her contention that her due process rights were violated when Magistrate Judge Porter granted the Government’s motion to reopen the case based on additional evidence on identity that was available previously. Analogizing to Federal Rule of Civil Procedure 60(b), Petitioner argues that because the evidence of identity

1 was not newly discovered, it was unfair for Magistrate Judge Porter to reconsider her denial
 2 of the request for extradition.

3 The Court first notes that while both the Government's motion to reopen [Docket # 22]
 4 and Judge Porter's initial decision denying extradition [Docket # 23] were filed on the same
 5 day (February 16, 2007), the Government's papers were filed first. Thus, on its face, Rule
 6 60 is inapplicable. Furthermore, the Federal Rules of Civil Procedure simply do not apply
 7 to extradition hearings. Matter of Requested Extradition of Smyth, 61 F.3d 711, 720-21 (9th
 8 Cir. 1995).

9 Nothing prevents the government from reinstating extradition proceedings after initial
 10 unsuccessful attempts. Hooker v. Klein, 573 F.2d 1360, 1365 (9th Cir. 1978); Collins v. Lisel,
 11 262 U.S. 426 (1923). A denial of a request for extradition is not a final judgment and does
 12 not have res judicata effect. Hooker, 573 F.2d at 1367-68. Thus, Petitioner's argument that
 13 she "should have some expectation of finality of a court's dispositive order" lacks merit in the
 14 context of extradition proceedings.

15 In Bovio v. United States, 989 F.2d 255 (7th Cir. 1993), the petitioner argued that it
 16 was a violation of due process for the magistrate judge to have allowed the government to
 17 reopen the proceedings after the judge denied extradition. The petitioner objected that "the
 18 government's subsequent effort at extradition was not pursuant to any new evidence but was
 19 a blatant attempt to correct the deficiencies in an investigation which had been completed
 20 five years previously." Id. at 260. In rejecting petitioner's claim, the Seventh Circuit
 21 explained, "The government, as any other party, has the right to move for reconsideration
 22 of a court's decision." Id. at 261. The court also noted that the government is permitted "to
 23 file multiple extraditions requests against the same person." Id. at 261 n. 5.

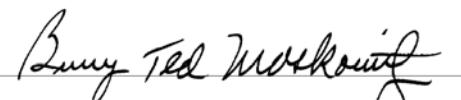
24 There is no due process right to the finality of a denial of extradition. The Magistrate
 25 Judge properly exercised her discretion to allow reopening by the Government to establish
 26 identity. Petitioner does not contend that the present record does not support the Magistrate
 27 Judge's finding of extradictability. Therefore, the Petition for Writ of Habeas Corpus is
 28 denied.

1 **CONCLUSION**

2 For the reasons discussed above, Petitioner's Petition for Writ of Habeas Corpus is
3 **DENIED**. The Clerk shall enter judgment accordingly.

4 **IT IS SO ORDERED.**

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6 DATED: October 18, 2007

7 
8 Honorable Barry Ted Moskowitz
9 United States District Judge

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